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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 21, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2001-00665

Ex Parte: In re further amendments to filing requirements for applications for authority to construct and operate an electric generating facility and development of expedited permitting procedures for small generating facilities of 50 MW or less

ORDER AMENDING FILING REQUIREMENTS

On December 14, 2001, the State Corporation Commission ("Commission") entered an order in Case No. PUE-2001-00313 amending the filing requirements for applications to construct and operate electric generating facilities. In that same order, the Commission established Case No. PUE-2001-00665 to consider further amendments to those filing requirements and to consider development of expedited permitting processes for small generating facilities of 50 MW or less. The further amendments, as proposed by the Commission, were related to cumulative environmental impacts, market power, and fuel and fuel infrastructure.

The order of December 14, 2001, also directed the Commission Staff ("Staff") to invite interested parties to participate in work group discussions on the proposed further

amendments and on the development of expedited permitting processes for generating facilities of 50 MW or less. The order required Staff to file a report with recommendations for further action and permitted interested parties to submit written comments and requests for hearing.

Staff filed its report on April 19, 2002 ("Report"). The Report explained that two work group meetings, which generated significant discussion by a large number of participants, were held on this matter. The Report also summarized the informal written comments of those that participated in the work group meetings. Based on the work group meetings, Staff developed a proposed set of revised filing requirements (20 VAC 5-302-10 et seq.) that were attached to the Report. Staff's proposed filing requirements modified the amendments originally set forth by the Commission in this case. On or before May 24, 2002, the parties in this case filed written comments on the Report and the proposed filing requirements. No requests for hearing were received.

NOW THE COMMISSION, upon consideration of the record established herein and the applicable law, is of the opinion and finds that the filing requirements in support of applications for authority to construct and operate an electric generating facility, as amended and attached hereto as Attachment A, should be adopted effective as of the date of

this Order for applications filed on or after September 1, 2002. A clean version of the rules is included as Attachment B.

We commend the parties for their efforts in addressing further amendments to the filing requirements. We note that there was significant preference expressed in the written comments for portions of the amendments proposed by Staff, as opposed to the requirements originally proposed by the Commission. In this regard, the requirements that we adopt today are based on the Staff's proposals, rather than Commission's initial amendments. In addition, parties submitting written comments also requested modifications to the amendments proposed by Staff. The remainder of this Order will discuss the amended filing requirements that we adopt and certain issues raised by the parties in relation thereto.

First, the filing requirements do not address cumulative environmental impacts. Subsequent to our order initiating this docket, the General Assembly passed Senate Bill No. 554 ("SB 554"), which became effective on July 1, 2002. Given this legislation, Commission filing requirements addressing cumulative environmental impacts are no longer necessary. Commission filing requirements do not limit either the filing requirements of, or what may be considered by, the Department of Environmental Quality ("DEQ") and other agencies. In

addition, in accordance with SB 554, the Commission and the DEQ have entered into a memorandum of agreement regarding the coordination of reviews of environmental impact of electric generating plants and associated facilities.¹ Accordingly, the amended filing requirements do not address cumulative environmental impacts.

The amended filing requirements include streamlined provisions for small generating facilities of 50 MW or less.² Most participants generally supported these streamlined requirements. Competitive Power Ventures, however, asserted that it is inappropriate to have separate filing requirements based solely on the size of the facility, and that this may encourage the construction of smaller units even if the economics otherwise would lead to the development of larger facilities. As noted by Columbia Gas of Virginia ("Columbia"), however, these streamlined requirements are consistent with § 56-578 D of the Code of Virginia ("Code"), which states that the "Commission shall consider developing

¹ See In the matter of receiving comments on a draft memorandum of agreement between the Department of Environmental Quality and the State Corporation Commission, Case No. PUE-2002-00315, Order Distributing Memorandum of Agreement (Aug. 14, 2002).

² See 20 VAC 5-302-25.

expedited permitting processes for small generation facilities of fifty megawatts or less."³

The DEQ and other environmental agencies request that additional information be included in the streamlined filing requirements. We will not adopt these requests. The purpose of this rule, consistent with § 56-578 D of the Code, is to streamline the Commission's filing requirements for these small facilities. As noted above, we emphasize that the Commission's filing requirements in no manner limit the environmental reviews undertaken by other agencies, nor do our regulations limit the information that such agencies may request from the applicant in order to perform environmental reviews.

The amended filing requirements also include information related to market power.⁴ These requirements apply to incumbent electric utilities and their affiliates, when such entities propose to construct facilities within the incumbent's control area. Appalachian Power Company and Dominion Virginia Power assert that this rule should not be limited to incumbents and their affiliates. Non-incumbents, however, generally supported such limitation. An incumbent

³ In addition, as suggested by Columbia and others, this rule has been clarified to state that units of exactly 50 MW are governed by the streamlined filing requirements.

⁴ See 20 VAC 5-302-35.

utility currently possesses a unique presence in its control area and is most likely to have a concentration of generation ownership.⁵ Thus, it is reasonable at this time to limit this filing requirement to incumbents and their affiliates.

Several parties also argued that the Federal Energy Regulatory Commission, and not the Commonwealth, will review market power. The issue of market power, however, may be

⁵ Moreover, the filing requirements of this or any other part of these rules do not place limits on matters that may be considered by the Commission with respect to a specific application to construct and operate generating facilities. The filing requirements also do not restrict matters that may be proper for discovery purposes under rule 5 VAC 5-20-240 of the Commission's Rules of Practice and Procedure.

relevant to our statutorily-required review of whether proposed generating facilities are contrary to the public interest. Moreover, § 56-596 A requires this Commission to take into consideration the goal of advancement of competition in the Commonwealth. Further, as explained by Dynegy, federal market power review will not necessarily address proposed assets, whereas the Commission's review under § 56-580 D must address, for example, proposed assets and the impact of such on the public interest.

Dominion Virginia Power, while commenting that the market power filing requirements are not overly burdensome, expressed concern regarding use of the term "control area" and requested the Commission to acknowledge the fundamentally regional nature of generation markets. In this regard, we emphasize that the market power filing requirements encompass not only the control area, but also capacity "reasonably accessible to the control area through transmission interconnections." Accordingly, the market power filing requirements currently recognize the regional nature of generation markets.

The amended filing requirements include information on fuel and fuel infrastructure.⁶ The required information does not reflect the Commission's originally proposed rule, which parties such as Allegheny Power, Columbia, and Dominion

⁶ See 20 VAC 5-302-20 9.

Virginia Power opposed as overly broad. Rather, the amended requirement includes the particular information proposed by Staff, for which these parties expressed a preference. In addition, Allegheny Power, Dynegy, and Competitive Power Ventures expressed opposition to any requirements in this regard. The assertions by these parties included, among other things, that fuel and fuel infrastructure should not be evaluated on a case-by-case basis. The Commission recognizes that fuel and fuel infrastructure involve wide-ranging issues. The Commission, however, remains obligated to evaluate individual applications on a case-by-case basis. Information on fuel and fuel infrastructure is relevant to the Commission's review of proposed generating facilities. Generating facilities may impact fuel and fuel infrastructure, which in turn may impact the public interest.

There were a number of requests that will not be resolved as part of this proceeding. For example, Allegheny Power asked the Commission to recognize that certain portions of an application may be identified by an applicant as commercially sensitive. The Commission's Rules of Practice and Procedure, however, provide sufficient opportunity for parties to seek confidential treatment of information.⁷

⁷ See 5 VAC 5-20-170.

MeadWestvaco Corporation ("MeadWestvaco") asserted that qualifying cogeneration facilities should be exempt from the filing requirements.⁸ This proceeding, however, is limited to specific amendments to the filing requirements; we will not issue a declaratory ruling as part of this case. In addition, there is not a fully developed record on MeadWestvaco's request, nor has there been an opportunity for legal analyses from interested parties.

Columbia requested that the Commission consider initiating a new proceeding to develop a standardized interconnection agreement, uniform interconnection standards, and minimum contract terms. We recognize the importance of interconnection standards, but we will not rule on Columbia's request as part of this limited proceeding.

Finally, the filing requirements do not include specific modifications recommended by the DEQ to ensure that it has a sufficient opportunity to adequately complete environmental reviews. These modifications are no longer necessary; as noted above, the DEQ and the Commission have recently executed a memorandum of agreement to ensure proper coordination between the two agencies.

⁸ On May 24, 2002, MeadWestvaco filed a motion for leave to file its notice of participation out-of-time. MeadWestvaco asserted that no party would be prejudiced by granting the motion, and no party opposed the motion. We will grant the motion.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Regulations amending 20 VAC 5-302-10 et al., Filing Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility, are adopted as set forth in Attachment A to this Order, effective as of the date of this Order for applications filed on or after September 1, 2002.

(2) A copy of this Order and the rules attached hereto as Attachment A shall be forwarded promptly for publication in the Virginia Register of Regulations.

(3) MeadWestvaco Corporation's motion for leave to file notice of participation out-of-time is granted.

(4) There being nothing further to come before the Commission in this case, it shall be removed from the docket and the papers filed herein placed in the file for ended causes.

CHAPTER 302.
FILING REQUIREMENTS IN SUPPORT OF APPLICATIONS FOR AUTHORITY TO
CONSTRUCT AND OPERATE AN ELECTRIC GENERATING FACILITY.

20 VAC 5-302-20. General information, electric generating facility information and documents to be included in the application [for electric generating facilities greater than 50 MW].

The following information shall be provided for all proposed electric generating facilities [with a rated capacity in excess of 50 MW]. In addition, an applicant requiring the construction of natural gas facilities in conjunction with the construction, ownership or operation of an electric generating facility shall serve notice of its application for construction of the electric generating facility upon all natural gas local distribution companies in whose certificated service territories the natural gas facilities will be constructed or operated.

1. Legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof, e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.
3. Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.
4. Financial information for the applicant, or principal participant or participants in the project. If the applicant or principal participant or participants is a private entity, financial information should include an analysis of the entity's financial condition and audited financial statements for the two most recent fiscal years. If the applicant or principal participant or

participants is a public company, financial information should include the entity's most recent stockholder report and most recent Securities and Exchange Commission Form 10-K.

5. Prefiled testimony in support of the application.
6. A discussion of the applicant's qualifications, including:
 - a. A summary of other projects developed and managed by the applicant. Include location, status, and operational history.
 - b. A detailed description of the organizational structure of the applicant. Include the division of ownership, if applicable.
 - c. A description of any affiliation or affiliations with an incumbent electric utility as defined in § 56-576 of the Code of Virginia.
7. Specific information about the site for the proposed facility, including:
 - a. A written description of the location including identification of the city or county in which the facility will be constructed. Such description should be suitable for newspaper publication and be sufficient for identification of affected areas.
 - b. A description of the site, and a depiction on topographic maps of the proposed site.
 - c. The status of site acquisition (i.e., purchase option, ownership, etc.).
 - d. A description of any applicable local zoning or land use approvals required and the status of such approvals.
8. Specific information about the proposed facility, including:
 - a. Description of all major systems, facility configuration and expected suppliers of major components.

b. Nameplate capacity, gross dependable capacity, net dependable capacity and expected seasonal heat rates.

c. Estimated costs, and schedule for construction, testing and commercialization.

9. A description of the fuel supply arrangement for the proposed facility. The description should detail:

a. Fuel type, quality and source or sources.

b. Transportation and fuel storage arrangements for fuel delivery.

c. Identification of all new pipeline facilities, if any, needed to serve the proposed facility.

d. Ownership of any such facilities.

e. Plans for constructing such facilities.

f. The location and routing of any such facilities.

g. The size of such facilities.

h. Whether such facilities will be utilized to provide or enhance fuel supplies to other entities.

i. [Impacts of applicant's facility, in conjunction with other proposed electric generating facilities and manufacturing facilities, on Virginia's natural gas and fuel oil infrastructure and availability of fuel supplies. Identify the pipeline or gas distribution company and the rate schedule the applicant intends to utilize in order to serve the proposed generating facility. Identify whether the service is firm or interruptible.]

j. If the applicant is to be served by firm capacity from an interstate pipeline, identify whether the capacity is to be acquired through the construction of new facilities, via capacity that is currently unsubscribed or through capacity purchased on the secondary market.

k. If pipeline capacity is to be constructed identify the FERC docket number or any open season that has been held by the interstate pipeline.

l. If capacity is to be purchased on the secondary market identify the availability of secondary market capacity in the plant's market area during days that the plant intends to operate.

m. Identify the proposed in-service date of any facilities to be constructed.

n. In general terms, describe the availability of fuel supplies required to serve the proposed facility.]

10. A discussion of economic impacts (both positive and negative), of the project. The discussion should address the tax and employment implications of the project.

11. A list of other local, state or federal government agencies whose requirements must be met in connection with the construction or operation of the project and a statement of the status of the approval procedures for each of these agencies.

12. An analysis of the environmental impact of the project shall be provided sufficient to enable the commission to make the determinations required by §§ 56-46.1 and 56-580 D of the Code of Virginia. This analysis shall include, but is not limited to, the impacts on the environment and natural resources, analysis of alternatives considered, unavoidable adverse impacts, mitigation measures proposed to minimize unavoidable impacts, and any irreversible

environmental changes. The information required by this subdivision shall be submitted to the Department of Environmental Quality, simultaneously with its filing with the Commission, for coordination and review by state agencies responsible for environmental and natural resource protection. Such information shall include at a minimum, the following:

a. Air quality. Discussion should identify required air permits, expected restrictions, expected emissions, rates of emissions, ~~[and any and any]~~ needed emissions offsets or allowances~~[, and the cumulative impacts of applicant's proposed facility and other proposed facilities on existing overall air quality in any area that may be impacted by the applicant's proposed facility. Other proposed facilities shall include all proposed electric generating and other proposed facilities that can or will influence air quality in any area that may be impacted by applicant's proposed facility if such facilities require an air permit issued by a state or federal authority and if the owners or developers of such facilities have sought approval from any federal, state or local governing body for zoning or land use permits such as special use permits or conditional use permits, or requests for water withdrawal permits or water discharge permits, or air permits. Assumptions regarding existing air quality should be based on the maximum allowed emissions from existing permitted sources and an ambient level of pollutants from non permitted sources].~~

b. Water source. Discussion should include required permits for water withdrawals, expected restrictions, the amount of water estimated to be used, the source of such water, identification of a back up source of water, if any, and identification of any facilities that need to be constructed to provide such water~~[, and the cumulative impacts~~

~~of applicant's proposed facility and other facilities on existing water resources in any area that may be impacted by applicant's proposed facility. Other facilities shall include all existing and proposed electric generating and other facilities that can or will draw from the same water source as applicant's proposed facility if such facilities have or will require a water withdrawal permit issued by a state or federal authority and if, in the case of proposed facilities, the owners or developers of such facilities have sought approval from any federal, state or local governing body for zoning or land use permits such as special use permits or conditional use permits, or requests for water withdrawal permits or water discharge permits, or air permits].~~

c. Discharge of cooling water. Discussion should include an identification of required permits for water discharge and potential impacts on regional water flows.

d. Tidal and non-tidal wetlands. Discussion should include an identification of any required permits related to the wetlands and an identification of any tidal and non-tidal wetlands located near the proposed site and how such wetlands will be impacted by applicant's proposed facility.

e. Solid and hazardous wastes. Discussion should address impact on local water resources.

f. Natural heritage, threatened and endangered species.

g. Erosion and sediment control.

h. Archaeological, historic, scenic, cultural, or architectural resources in the area.

i. Chesapeake Bay Preservation Areas designated by the locality.

- j. Wildlife resources.
 - k. Recreation, agricultural and forest resources. Discussion should identify federal, local, state or private parks and recreation areas.
 - l. The use of pesticides and herbicides.
 - m. Geology and mineral resources, caves, and sinkholes.
 - n. Transportation infrastructure.
13. A general discussion of reliability impacts including:
- a. A description of transmission interconnection requirements and needed interconnection facilities.
 - b. A description of the potential impact of the proposed facility on the interconnected transmission system. Discussion should identify and summarize any system impact studies or proposed studies.
 - c. A description of anticipated services (ancillary services, re-dispatch, energy imbalance, etc.) that may be provided to any transmission service provider.
 - d. A discussion of existing and expected generation reserves in the region and the impact of the proposed facility on such reserves.
14. A discussion of whether the proposed facility is not contrary to the public interest. Such discussion shall include, but is not limited to, an analysis of any reasonably known impacts the proposed facility may have upon reliability of service to, and rates paid by, customers of any regulated public utility for service in the Commonwealth, including water service, gas distribution service, electric distribution service, and electric transmission service.

[15. A discussion of how the proposed facility will impact an applicant's ability to exert market power within the control area in which the facility is expected to be constructed. In addition, the following information should be included.

a. Total capacity controlled by, or under contract to the applicant and its affiliates located within the control area and reasonably accessible to the control area through transmission interconnections, with and without the proposed facility.

b. Information regarding whether there are purchase options for the project or any part of its output. Such information should identify the holder of any such options.

c. Total capacity located within the control area and reasonably accessible to the control area through transmission interconnections, prior to construction of the proposed facility.

d. Five year projections of total expected capacity additions by size, technology and fuel type within the control area and expected increases in transmission interconnection capacities into the control area.

e. Five year projections of capacity additions by size, technology and fuel type within the control area to be made by the incumbent electric utility and its affiliates.

f. A description of the impact of the proposed facility on transmission congestion.

g. A market power analysis that demonstrates that neither the applicant nor an affiliate of the applicant, considered separately and collectively, has or will have, as a result of the control of electric generating capacity or energy within a transmission constrained area, market power over the sale of electric generating capacity or energy to

~~retail customers located within the Commonwealth, or to licensed competitive service providers selling electric generating capacity or energy to retail customers located within the Commonwealth.]~~

15.~~[16.15.]~~ A discussion of whether and, if so, how the project will further the goals of advancement of electric competition in Virginia.

[20 VAC 5-302-25. General information, electric generating facility information and documents to be included in the application for electric generating facilities equal to 50 MW or less.

The following information shall be provided for all proposed electric generating facilities with a rated capacity of 50 MW or less.

1. Legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof, e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.
3. Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.
4. Financial information for the applicant, or principal participant or participants in the project. If the applicant or principal participant or participants is a private entity, financial information should include an analysis of the entity's financial condition and audited financial statements for the two most recent fiscal years, if available. If the applicant or principal participant or participants is a public company, financial information should include the entity's

most recent stockholder report and most recent Securities and Exchange Commission Form 10-

K. If such information is unavailable, provide evidence that applicant has the financial resources, or access to capital, necessary to complete the proposed project.

5. A discussion of the applicant's qualifications, including:

a. A summary of other projects developed and managed by the applicant.

Include location, status, and operational history.

b. A description of any affiliation or affiliations with an incumbent electric utility as defined in § 56-576 of the Code of Virginia.

6. Specific information about the site for the proposed facility, including:

a. A written description of the location including identification of the city or county in which the facility will be constructed. Such description should be suitable for newspaper publication and be sufficient for identification of affected areas.

b. A description of the site, and a depiction on topographic maps of the proposed site.

c. The status of site acquisition (i.e., purchase option, ownership, etc.).

7. A general description of the proposed facility, type of facility, size and fuel type.

8. A general description of the fuel supply arrangement for the proposed facility.

9. A general discussion of the economic developments impacts of the project.

10. A list of other local, state or federal government agencies whose requirements must be met in connection with the construction or operation of the project and a statement of the status of the approval procedures for each of these agencies.

11. An analysis of the environmental impact of the project shall be provided sufficient to enable the commission to make the determinations required by §§ 56-46.1 and 56-580 D of the Code of Virginia. This analysis shall include, but is not limited to, the impacts on the environment and natural resources, analysis of alternatives considered, unavoidable adverse impacts, mitigation measures proposed to minimize unavoidable impacts, and any irreversible environmental changes. The information required by this subdivision shall be submitted to the Department of Environmental Quality, simultaneously with its filing with the Commission, for coordination and review by state agencies responsible for environmental and natural resource protection. Such information shall include at a minimum, the following:

a. Air quality. Discussion should identify required air permits, expected restrictions, expected emissions, rates of emissions, and any needed emissions offsets or allowances.

b. Water source. Discussion should include required permits for water withdrawals, expected restrictions, the amount of water estimated to be used, the source of such water, identification of a back up source of water, if any, and identification of any facilities that need to be constructed to provide such water.

c. Discharge of cooling water. Discussion should include an identification of required permits for water discharge and potential impacts on regional water flows.

d. Tidal and non-tidal wetlands. Discussion should include an identification of any required permits related to the wetlands and an identification of any tidal and non-tidal wetlands located near the proposed site and how such wetlands will be impacted by applicant's proposed facility.

e. Solid and hazardous wastes. Discussion should address impact on local water resources.

f. Natural heritage, threatened and endangered species.

g. Erosion and sediment control.

h. Archaeological, historic, scenic, cultural, or architectural resources in the area.

i. Chesapeake Bay Preservation Areas designated by the locality.

j. Wildlife resources.

k. Recreation, agricultural and forest resources. Discussion should identify federal, local, state or private parks and recreation areas.

l. The use of pesticides and herbicides.

m. Geology and mineral resources, caves, and sinkholes.

n. Transportation infrastructure.

12. A general discussion of reliability impacts including:

a. A description of transmission interconnection requirements and needed interconnection facilities.

b. A description of the potential impact of the proposed facility on the interconnected transmission system. Discussion should identify and summarize any system impact studies or proposed studies.

c. A description of anticipated services (ancillary services, re-dispatch, energy imbalance, etc.) that may be provided to any transmission service provider.

d. A discussion of existing and expected generation reserves in the region and the impact of the proposed facility on such reserves.

13. Any other information the applicant wishes to include that will demonstrate that the project is not contrary to the public interest.

14. A discussion of whether and, if so, how the project will further the goals of advancement of electric competition in Virginia.

20 VAC 5-302-35. Information required from incumbent electric utilities and affiliates of incumbent electric utilities.

Any incumbent electric utility as defined in §56-576 of the Code of Virginia and any affiliate of an incumbent electric utility proposing to construct an electric generating facility within its control area in the Commonwealth of Virginia should provide a discussion of how the proposed facility will impact its ability to exert market power within its control area. In addition, the following information should be included:

1. Total capacity controlled by, or under contract to, the applicant and its affiliates located within the control area and reasonably accessible to the control area through transmission interconnections, with and without the proposed facility.

2. Total capacity located within the control area and reasonably accessible to the control area through transmission interconnections, with and without the proposed facility.

3. A calculation showing the percentage of capacity within and accessible to the control area through transmission interconnections owned by the applicant and its affiliates, with and without the proposed facility.]